

191—48.2(508E) Definitions.

“Advertising” means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract.

“Business character report” means a statement certified by an independent third party which has conducted a comprehensive review of the applicant’s background and has indicated that the biographical information provided in the report, as completed by the applicant, has no inaccurate or conflicting information. An independent third party is one that has no affiliation with the applicant and is in the business of providing background checks or investigations. Business character reports must be current and shall not be older than one year prior to the date the application is filed. The business character report shall be in the format prescribed by the commissioner.

“Business of viatical settlements” means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts or viatical settlement investment contracts.

“Escrow agent” means an individual or institution that has established an escrow or trust account with a state-chartered or federally chartered financial institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC) and with whom an escrow account has been established for use by a viatical settlement provider or viatical settlement purchaser.

“Financing entity” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

1. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
2. Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

“Financing entity” does not include a nonaccredited investor or viatical settlement purchaser.

“Life settlement” means a viatical settlement in which the viator has not been diagnosed as terminally or chronically ill. For purposes of these rules, unless otherwise distinguished, the term “life settlement” shall be synonymous with viatical settlement.

“Person” means a natural person or a legal entity including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.

“Policy” means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

“Related provider trust” means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

“Special purpose entity” means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.

“Viatical settlement broker” means a person that, on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical

settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, a certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

"Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, will be paid to the viator in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to provide for lump sum settlements or annuities pursuant to subrule 48.9(16) only, such settlements to be made at the time of assignment. *"Viatical settlement contract"* does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

"Viatical settlement investment agent" means a person who solicits or arranges for the purchase of a viatical settlement investment contract by a viatical settlement purchaser and who is acting on behalf of an issuer as defined in Iowa Code chapter 502.

"Viatical settlement investment contract" means a contract or agreement that is entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy and that is entered into for the purpose of deriving an economic benefit. A viatical settlement investment contract is a security under Iowa Code chapter 502.

"Viatical settlement provider" means a person other than a viator that enters into or effectuates a viatical settlement contract. A viatical settlement provider may be an issuer of securities requiring registration of the viatical settlement investment contract pursuant to Iowa Code chapter 502. *"Viatical settlement provider"* does not include:

1. A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
2. The issuer of a life insurance policy providing accelerated benefits;
3. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, special purpose entity or related provider trust;
4. A financing entity;
5. A special purpose entity;
6. A related provider trust;
7. A viatical settlement purchaser; or
8. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

"Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. *"Viatical settlement purchaser"* does not include:

1. A viatical settlement provider or viatical settlement broker licensed and acting under these rules; or
2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933. An institutional buyer under rule 191—50.46(502) shall include an accredited investor.

"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

“*Viator*” means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract to sell the life insurance policy or certificate. For the purposes of these rules, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. “Viator” does not include:

1. A viatical settlement provider or viatical settlement broker as defined in this rule.
2. An institutional buyer as defined in rule 191—50.46(502) or a qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, and who purchases a viaticated policy from a viatical settlement provider. An institutional buyer under rule 191—50.46(502) shall include an accredited investor, as long as such accredited investor is not the named insured or owner of the policy to be viaticated.
3. A financing entity.
4. A special purpose entity.
5. A related provider trust.